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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 530

PORTO RICAN AMERICAN SUGAR REFINERY, INC., *Petitioner*,

v.

CENTRAL ROSE EXPORTING COMPANY and WESTERN SUGAR REFINING COMPANY, *Respondents*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

CHARLES J. ARMBRUSTER,
ARTHUR L. QUINN,
GORDON P. PEYTON,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
Opinion Below	1
Summary Statement of the Matter Involved	1
The Question Involved	4
Jurisdictional Statement	4
Reasons for Granting the Writ	4
Conclusion	5

CITATIONS.

Cases:

Gray v. *Powell*, 314 U. S. 402 (1941)	4
Interstate Commerce Commission v. *Jersey City*, 322 U. S. 503 (1944)	5
Railroad Commission of Texas v. *Rowan & Nichols Oil Company*, 310 U. S. 573 (1940)	5
Rochester Telephone Corporation v. *United States*, 307 U. S. 125 (1939)	4
St. Joseph Stock Yards Company v. *United States*, 298 U. S. 38 (1936)	4
Securities and Exchange Commission v. *Chenery Corporation*, 332 U. S. 194 (1947)	5
Swayne and Hoyt, Ltd. v. *United States*, 300 U. S. 297 (1937)	4

Statutes and Order:

Judicial Code, 28 U. S. C. Sec. 1254	4
Sugar Act of 1948, 61 Stat. 922-933, 7 U. S. C. 1100-1160	
Sec. 201	1
Sec. 202(a)	2
Sec. 205(a)	2, 3, 4, 5
Sec. 205 (b)-(f)	4
Sec. 207(b)	2, 3
Sec. 209(a)	2
Sec. 302(b)	3
Puerto Rico Sugar Order 18, 13 F. R. 310-313	1, 2, 3, 4

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OPINION BELOW.

The opinion of the Court of Appeals for the District of Columbia Circuit (R. 194) is not yet reported. The findings and order of the Secretary of Agriculture (Puerto Rico Sugar Order 18, R. 160-176) are reported in 13 F. R. 310-313.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This action arises under the Sugar Act of 1948 (61 Stat. 922-933, 7 U. S. C. 1100-1160). Section 201 of this Act provides that the Secretary of Agriculture shall determine for each calendar year the amount of sugar necessary to meet consumption requirements in the United States. Section

202 (a) specifies the quotas of sugar that may enter the United States from (1) the domestic beet sugar area; (2) the mainland cane sugar area; (3) Hawaii; (4) Puerto Rico; and (5) the Virgin Islands. Section 207 (b) provides that not more than 126,033 short tons of Puerto Rico's raw sugar quota for any year may be filled by direct-consumption sugar (*i.e.*, any sugar which is to be consumed without further processing) and Section 209 (a) prohibits the entry into the United States of any direct-consumption sugar after the direct-consumption portion of a quota has been filled. Section 205 (a) provides that whenever the Secretary of Agriculture deems it necessary, he may after notice and hearing, allot the quota for any area among the persons who market sugar from that area, arriving at a fair, efficient and equitable distribution by taking into consideration (1) the processings of sugar from sugar cane to which "proportionate shares" pertained; (2) "past marketings"; and (3) "ability . . . to market."

On December 4, 1947, the Secretary found it necessary to allot Puerto Rico's refined sugar quota for 1948, and accordingly published a notice of hearing. This hearing was held December 18-19, 1947. On January 16, 1948, the Secretary issued Order 18 (13 F. R. 310-313), which appears in full in the record (R. 160-176), allotting the Puerto Rican direct-consumption sugar quota among six allottees, including petitioner. In this order the Secretary found that the allotment was necessary to prevent disorderly marketing; he summarized the evidence introduced at the hearing; and he explained in detail why the method of allotment chosen resulted in "a fair, efficient and equitable distribution." In allotting the quota, the Secretary determined "ability to market" by considering the best single year's performance by each allottee during the period 1935-1947, inclusive. In determining "past marketings," the Secretary excluded the years 1942 through 1947 as unrepresentative, in view of wartime dislocations and governmental restrictions, and considered instead the average of the highest five years of

marketings by each refiner during the period 1935 through 1941. The Secretary considered also the standard of "proportionate shares," but found it inapplicable and therefore gave it a weighting of zero, since he concluded that "proportionate shares" can be calculated only with respect to the quantity of sugar cane processed into raw sugar (Section 302 (b) of the Act), and the three largest Puerto Rican refiners (which are the only insular refiners parties to the present action) do not engage in such processing.

Central Roig Refining Company and Western Sugar Refining Company, which were among the allottees, then appealed directly to the United States Court of Appeals for the District of Columbia Circuit under Section 205 of the Act, which permits such direct judicial review as to questions of law, and which also provides that the Secretary's findings of fact, if supported by substantial evidence, shall be final unless shown to be clearly arbitrary or capricious. Appellants in the lower court contended that Order 18 failed to comply with the requirements of Section 205 (a), and that Section 207 (b) violated the due process clause of the Fifth Amendment. The American Sugar Refining Company, *et al.*, intervened to defend the constitutionality of the Act. The Government of Puerto Rico intervened to attack its constitutionality. Petitioner intervened (R. 183-187) to defend the validity of Order 18. The Court of Appeals reversed Order 18 and remanded the case to the Secretary on the ground that he had no statutory authority to reject as inapplicable the standard of "proportionate shares," but was compelled to accord it some weight greater than zero: that "ability to market" must be measured by current marketings; and that "past marketings" must be measured by individual performances during the last six years or at least the more recent of them, regardless of whether war or any other external factor made those years unrepresentative. Because Order 18 was found to be invalid, the majority of the court decided that it was unnecessary to determine the constitutional question.

THE QUESTION INVOLVED.

Whether Order 18 of the Secretary of Agriculture complies with the standards of Section 205 (a) of the Sugar Act of 1948, and represents a permissible exercise of administrative discretion within the statutory framework of the Act.

JURISDICTIONAL STATEMENT.

It is contended that the Supreme Court has jurisdiction under 28 U. S. C. Section 1254, to review the judgment here in question, which was entered on November 24, 1948. This action was brought under Section 205 (b)-(f) of the Sugar Act of 1948. Section 205 (e) provides that the judgment of the United States Court of Appeals for the District of Columbia Circuit shall be subject to review by the Supreme Court upon writ of certiorari.

REASONS FOR GRANTING THE WRIT.

1. Inasmuch as the Court of Appeals has reversed an administrative order issued by the Secretary of Agriculture after due notice and hearing, and based upon extended findings supported by the hearing record, it has not given proper weight to decisions of this Court upholding the finality of reasonable administrative determinations. In recent years it has been stated by this Court so frequently that it has become almost axiomatic that an administrative decision will be upheld if it satisfies the requirements of due process, is based upon substantial evidence and is consistent with the authority granted by Congress, *e.g.*, *Gray* v. *Powell*, 314 U. S. 402, 412 (1941); *Rochester Telephone Corporation* v. *United States*, 307 U. S. 125, 146 (1939); *Swayne and Hoyt, Ltd.* v. *United States*, 300 U. S. 297, 304 (1937). This principle is, of course, applicable to determinations by the Secretary of Agriculture, see *St. Joseph Stock Yards Company* v. *United States*, 298 U. S. 38, 51 (1936). Order 18 was issued only after interested parties had been heard.

The evidence adduced at the hearing was relied upon and the three statutory standards were considered by the Secretary when he made his findings and determination. The allotment was found by the Secretary to be "fair, efficient and equitable" as required by the statute. Reversal by the Court of Appeals was predicated not upon the facts as stated in the record but upon the assumption that allotments under the Sugar Act of 1948 can be made only by adherence to the specific formula set forth by the Court of Appeals.

2. There are compelling reasons why the doctrine of administrative finality should be particularly applicable to allotment orders issued under the authority of the Sugar Act of 1948. Section 205 (a) provides that the allotments within any quota area shall be such as to result in a "fair, efficient and equitable distribution of such quota or proration thereof." This Court has held that the insertion in a statute of such words as "fair and equitable" evidences an intent by the framers to confer broad powers upon the agency entrusted with the administration of the statute, and precludes a reversal in the absence of a plain abuse of discretion, *Securities and Exchange Commission* v. *Chenery Corporation* et al., 332 U. S. 194, 208 (1947). Furthermore, this Court has recognized that broad discretion is required when allotments must be set pursuant to statute, *Railroad Commission of Texas* v. *Rowan & Nichols Oil Company*, 310 U. S. 573, 580-581 (1940). It has also recognized that where several factors enter into a determination, the administrator alone should decide the weight to be given each factor, *Interstate Commerce Commission* v. *Jersey City*, 322 U. S. 503, 522 (1944). In the present case the Court of Appeals did not deny that the Secretary exercised his discretion with a view to achieving a fair and equitable result; indeed, the court expressly criticized the fact that in using pre-war as well as wartime marketings to measure "ability to market," the Secretary was motivated by a desire for fairness. The court held, in effect, that the Secretary has virtually no

discretion in administering the allotment provisions of the Sugar Act of 1948 regardless of the inequities which may result from the application of a hard and fast formula. Such an interpretation of the Sugar Act is wholly inconsistent with precedents of this Court.

3. This is the first case in which the Sugar Act of 1948 has been before the courts. In construing the Act to support the ruling that the Secretary acted beyond the scope of his statutory power, the United States Court of Appeals for the District of Columbia Circuit has decided a question of substance relating to the construction of a statute of the United States, which should be settled by this Court.

4. Petitioner is in accord also with the arguments advanced in the petition for certiorari which has been filed in the present case by the Secretary of Agriculture.

CONCLUSION.

Wherefore your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia Circuit.

ORLANDO J. ANTONSANTI,
ARTHUR L. QUINN,
GORDON P. PEYTON,
Counsel for Petitioner.

February 21, 1949.

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OCTOBER TERM [redacted] 1949

No. [redacted] 32

THE GOVERNMENT OF PUERTO RICO, *Petitioner*

v.

THE SECRETARY OF AGRICULTURE, PORTO RICAN AMERICAN SUGAR REFINERY, INC., THE AMERICAN SUGAR REFINING COMPANY, ET AL., CENTRAL ROIG REFINING COMPANY and WESTERN SUGAR REFINING COMPANY, *Respondents*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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CONTENTS.

	Page
Introduction	1
I. Opinion below	2
II. Jurisdiction	2
III. Statutes Involved	2
IV. Statement of the Matter Involved	3
V. History of the Instant Case	7
VI. The Questions Presented	9
1. Whether in a case in which the question is properly raised, and where matters of consequence are involved, a party in interest is entitled to a definition of its rights	9
2. Whether or not Sugar Order No. 18 is in conformity with the standards laid down by the Congress in Section 205(a) of the Act	11
3. Whether or not Section 207(b) of the Act is authorized by the Constitution	12
VII. Reasons for Granting the Writ	15
1. The failure of the court below to decide the constitutional question imposes no bar to, and in no wise makes more difficult, its consideration by this Court	16
2. The established principles of sound judicial administration demand the timely disposition of the constitutional issue	16
3. Also all the interests of the Government and the people of Puerto Rico will be put in jeopardy by a delay in reaching a final judgment upon the validity of the accused section	18
4. The citizens of Puerto Rico without access to the federal political process, have no recourse save to the courts for the protection of their rights	21
Conclusion	21

CASES.

	Page
Downes v. Bidwell, 182 U. S. 244	15
Federal Trade Commission v. Goodyear Tire and Rubber Co., 304 U. S. 252	17
State of Georgia v. Tennessee Copper Co., 206 U. S. 230	9
State of Georgia v. Pennsylvania R. R. Co., 324 U. S. 439	9
U. S. v. Carolene Products Co., 304 U. S. 144	21
U. S. v. Butler Co. ex rel. Hoosiac Mills, 297 U. S. 1	4

STATUTES.

The Jones-Costigan Act (May 9, 1934) 48 Stat. 670	3
Sugar Act of 1937 (Sept. 1, 1937) 50 Stat. 903	4
Sugar Act of 1948 (Aug. 8, 1947) 61 Stat. 922	passim
The Organic Act of March 2, 1917	passim

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the Government of Puerto Rico, a party to the proceeding below by its motion to intervene properly made and granted, respectfully prays for a writ of certiorari directed to the United States Court of Appeals to and for the District of Columbia Circuit to review the

decision and judgment of the said court in the case of *Central Roig Refining Company and Western Sugar Refining Company v. Secretary of Agriculture*, dated November 24, 1948. Petition has no interest in and no concern with the narrow statutory question upon which the Secretary of Agriculture this day is asking for a writ of certiorari. In accordance with its interests, the Government of Puerto Rico is seeking a review in respect to the constitutional question which, although "fully argued" as the opinion admits, the court below refused to decide. And, in support of this, its petition for certiorari, the Government of Puerto Rico says as follows:

I. Opinion Below.

The opinion of the United States Court of Appeals for the District of Columbia Circuit delivered on Nov. 24, 1948, has not yet appeared in reports.

II. Jurisdiction.

The jurisdiction of this Court is invoked under section 347, 28 U.S.C.A. (Judicial Code 240, as amended), in defense of rights established by the Constitution of the United States and extended to the people of Puerto Rico by the Act of Congress of March 2, 1917, as amended, known as the Organic Act. It is invoked against Section 207(a) of the Sugar Act of 1948, which is not authorized by the Constitution and which is repugnant to many of its provisions including among others Article I, sections 8 and 9, Article II, section 3, and the Fifth Amendment.

III. Statutes Involved.

In addition to the Constitution of the United States, the statutes principally involved in the instant case are the Organic Act of March 2, 1917, as amended, establishing the present civil government in Puerto Rico and sections 101, 201, 205 and 207 of the Sugar Act of 1948 (Pub. Law No. 388, 80th Cong., 1st Sess., ch. 519, Aug. 8, 1947).

IV. Statement of the Matter Involved.

The instant case presents two overlapping yet distinct questions. The first is the validity of the Decree and Order Allocating the Direct Consumption Portion of the 1948 Sugar Quota for Puerto Rico, issued by the Secretary of Agriculture. The second is the validity of the section of the Sugar Act of 1948 upon which the Order and Decree are predicated. Sugar Order No. 18 and Section 207(b), in legal challenge in the instant case, are technical in character and the justiciable issues which they present are to be understood only against the background of raw sugar, an industry in distress.

For many years the imposition of order and justice upon the raw sugar industry was left to the open market. The many sources of supply were widely scattered. The product extracted from cane and beets grown within the continental United States was insufficient to meet the demand. The great bulk of sugar essential to the nation's needs was purchased in the world market. In respect to raw sugar the market, giving play to competitive forces, failed in its regulatory office. Tropical growth and the one-crop system conspired to keep supply continuously in excess of a slowly increasing demand. Price was depressed below the cost of production. The growers were too numerous and too distant from each other either to adjust acreage to the ups and downs of price or through collective action to attack the sources of disorder. A competition out of hand resulted in a continuous plague of bankruptcy among the growers and for the workers a standard of life depressed far below the level of decency.

At last the Federal government was called upon to take over the regulatory office of the market. In the Jones-Costigan Act of 1934[1]—an adaptation of the current pattern of farm relief to the circumstances of sugar-growing—the intent of the Congress is clean. It is to lift the terri-

[1] May 9, 1934, C. 263, 48 Stat. 670, Title 7, Paragraphs 611.

tories from which the continental United States draws its sugar supply to a "plateau" and there to insulate raw sugar against the forces which had brought havoc to the world market. The rationale of this Act was to replace the open market with an administrative control in order that health might be brought to an industry in distress. The Jones-Costigan Act was superseded by the Sugar Act of 1937,[2] which in turn gave way to the Sugar Act of 1948.[3]

Thus in the Sugar Act of 1948 a pattern is imposed upon the growing of sugar. For technical reasons, in recognition that principal sources of supply are under foreign flags and because of an important decision of this court,[4] the Act was written in terms of the number of tons of sugar which annually each supplying territory was permitted to market on the mainland. To that end the Secretary of Agriculture[5] was instructed to determine for each year the total needs of the continental United States for household and industrial consumption (Act, Section 201). In accordance with what was right and fair, the total so ascertained was to be broken down and substantial quotas were to be assigned to Cuba, Hawaii, Puerto Rico, the Virgin Islands, the Republic of the Philippine Islands, as well as to the cane and the beet growing regions on the mainland. A small quota was assigned to the rest of the world.

In framing a statute addressed to the plight of raw sugar, the Congress kept the public interest to the front. A sufficient amount of sugar was permitted entrance to meet all domestic demands. No industry or person was to go without. For each of the sugar supplying territories—whether continental or off-shore—access to the mainland market was limited; and each, in lieu of competing for this market, had a quota assigned to it. The restriction has

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[2] Sept. 1, 1937, C. 898, 50 Stat. 903; Title 7, Paragraphs 1101-1183.

[3] Aug. 8, 1947, C. 519, Parag. 1, 61 Stat. 922; Title 7.

[4] In *U. S.* v. *Butler ex rel Hoosac Mills*, 297 U. S. 1, 56 S. Ct. 312.

[5] Hereinafter referred to as the Secretary.

not been severe; the quotas assigned to Hawaii and to Puerto Rico, as well as to the cane and the beet regions on the mainland, have not been far short of capacity. In the Act, Cuba, a foreign country—which alone can supply all our continental demands—is called upon to give flexibility to the system of control. In effect its variable quota makes up the deficit between our continental needs and the supplies available from American territories. Relief from a chaotic condition has been brought about by a marketing quota system which in effect serves the purpose of a protection tariff. As a result, the price of sugar has been stabilized at a level high enough to cover necessary costs; economic security has been established for the industry; the standard of life of the workers in the cane and beet fields has been substantially advanced. In general, as respects the growing of sugar, the Act has realized the intent which prompted it.

The task of Congress was finished in setting up the system of regulation for raw sugar. But the Congress went on to graft upon the Act certain alien provisions in respect to refined sugar. In spite of the fact that through the regulation of raw, supply has been equated to demand and that accordingly the business of refining could safely be left to the open market, it ventured where there was no legislative need. It did not, however, following its pattern for raw, and establish a system of allocation for refined sugar. It assigned no quotas to the several territories for the processing or marketing of refined. Instead, the Congress in specific terms decreed maxima for the "portions of the marketing quotas" assigned to the several off-shore territories which could be filled with "direct-consumption sugar". Thus, of the 910,000 short tons of sugar raw value which annually Puerto Rico was permitted to market in the continental United States, not more than 126,033 tons were to be imported in refined form. Similar restrictions were set against all the off-shore territories except the Virgin Islands which was permitted to market on the mainland no

sugar in refined form. Yet no similar maxima for the amounts they were permitted to market in refined form within the continental United States was set against any mainland refiners, any group of them, or against their number as a whole.

The character of this Act of discrimination appended to a farm relief act is obvious. Puerto Rico may market on the mainland refined sugar up to 126,033 tons, but not a pound in excess. It may market far less than the figure fixed or even none at all. To market any refined sugar, it must compete with the mainland refiners for the business. Yet the competition cannot be set in reverse; for the Act endows the Atlantic and Gulf coast refiners with the privilege of refining all sugar marketed in the continental United States, without having to struggle for the business, save for the small portions which off-shore territories may refine and market—if they can get the business. The Secretary has argued that these limitations are part of a quota system for refiners (Reply Brief in the court below, p. 2). Yet, neither in Section 207 of the Act, imposing the restraints, nor in Section 101, where terms are defined, is the word "quota" used with reference to "direct consumption sugar". And Section 207 fails to reveal even the outlines of a quota system. The Atlantic refiners are more nearly correct when they insist (Reply Brief in the court below, p. 8) that the limitations upon the off-shore territories are "compensation" to them for limitations which the Act had placed upon their sources of supply. Thus, save for the small quanties specified, Section 207 makes the off-shore territories ineligible to refine sugar for the continental market. It vests, save for these small driblets, the right to refine all sugar to be marketed on the mainland in the continental refiners. In a word the Congress, in grafting an alien provision on the Act, treated the continental market as a proprietary domain, upon which, save for minor concessions, the American off-shore territories were forbidden to trespass.

V. History of the Instant Case.

On January 16, 1948, the Secretary, seeking to secure "an orderly and adequate flow of sugar" and in accordance with Section 205(a) of the Act,* issued Sugar Order No. 18, allocating among the sugar refiners of the island the maximum of 126,033 tons of refined sugar which Puerto Rico was permitted to market on the mainland. On February 11, 1948, the appellants, Central Roig Refining Company and Western Sugar Refining Company, being dissatisfied with the allocations granted them, sought a review of the order, and questioned the power of the Secretary of Agriculture to make it, in the court below.

Thus there was presented to the United States Court of Appeals for the District of Columbia Circuit two legal issues.

1. The first, lesser and more immediate question was whether the allocation for the year 1948 of the direct consumption portion of the sugar quota for Puerto Rico did or did not constitute a "fair, efficient and equitable" distribution in accordance with Section 205(a) of the Act.

2. The second, greater and more enduring question was the authority of the Secretary to issue any allocation order in respect to refined sugar or to appoint any limit to the portion of its sugar quota which Puerto Rico could fill with "direct consumption sugar". In other words it is whether Section 207(b) of the Act, imposing a maximum upon the portion of the sugar quota to be marketed by Puerto Rico within the continental United States which may be filled with refined sugar represents a valid exercise of the power of the Congress.

It is obvious that the two questions are distinct and would have to be separately decided. For if the order was found valid, the authority to issue it would still be in question. And if the accused section was found to be authorized by the Constitution, the issue of conformity to standards in the

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* Unless otherwise specified the word Act refers to the Sugar Act of 1948.

statute would still have to be met. It is true that if Section 207(b) were to be held invalid, the order would fall with it. But if the order were held invalid it would not dispose of the challenge to the validity of the accused section. For a decision adverse to the order could do justice among Puerto Rican refiners only within the confines of the allocable 126,033 tons. If these refiners were to be able, like the mainland refiners, freely to expand their operations, relief could come only from a declaration of the invalidity of the accused section. To avoid the discrimination whereof these refiners and the Government of Puerto Rico complain, the accused section would have to be proclaimed null and void.

In respect to these two issues the lines of legal battle were drawn. The Central Roig and Western Companies confronted the Secretary of Agriculture on both questions. In accordance with Section 205(d) of the Act, the Porto Rican American Sugar Refinery, Inc. and the American Sugar Refining Company, et al. by intervention became parties to the case. On May 24, 1948, under 38(c) of the Rules of the court below, the Government of Puerto Rico sought, and on June 9, 1948, was by the court below granted permission by intervention to become a party to this case. The intervention of the Porto Rican American Sugar Refinery, Inc., was limited to a defense of the order. The American Sugar Refining Company, et al., and the Government of Puerto Rico, professing no interest in the allocation, entered the case, the one to defend and the other to attack the validity of the accused section.

After the presentation of briefs, and an oral argument before Edgerton, Clark and Wilbur Miller, JJ., on November 24, 1948, the court below handed down its judgment. In respect to the narrow question it found that the allocations made by the Secretary in Sugar Order No. 18 were not in accord with the standards set down by Congress in Section 205(a) of the Act. Accordingly, "we must reverse it and remand the case" to the Secretary. In respect to the broader question it made no finding. In the words of the

decision, "a majority of the court are of opinion that since the order is not authorized by the Act we cannot, within established principles of review, undertake to decide whether Section 207(b) of the Act is authorized by the Constitution. All agree that this question has been fully argued, and my own view (that is of Edgerton, the spokesman) is that we should decide it." The failure to decide this larger question is the issue upon which the Government of Puerto Rico here petitions for a writ of certiorari.

VI. The Questions Presented.

The questions presented by the action of the court below, whose judgment this Court is asked to review, are explicit in the Statement and History just recited and require little elaboration here. The dominant issues are three in number.

1. WHETHER, IN A CASE, IN WHICH THE QUESTION IS PROPERLY RAISED, AND WHERE MATTERS OF CONSEQUENCE ARE INVOLVED, A PARTY IN INTEREST IS ENTITLED TO A DEFINITION OF ITS RIGHTS.

In the instant case, a "verified statement of interest, (section 205(d) of the Act) is requisite to becoming a party to the appeal and renew. In its motion to intervene the Government of Puerto Rico presented to the court below such a statement. On the basis of this showing its motion to intervene was granted. It sought such intervention in a dual capacity, (a) in its sovereign capacity, as charged with the formulation and execution of a public policy which was put in jeopardy by the accused section of the Act and the power of the Congress upon which it was claimed to rest; and (b) in its capacity of parens patriae, to make secure against arbitrary legislative discrimination the civil rights of its people, including the ancient liberty of a trade, against arbitrary legislative discrimination.[7] The very substantial

[7] For the right of a political body to sue in such a capacity see *State of Georgia* v. *Tennessee Copper Co.*, 206 U. S. 230, and *State of Georgia* v. *Pennsylvania Railroad Co.*, 324 U. S. 439.

interest which led the Government of Puerto Rico to challenge the validity of Section 207(b) of the Act is recited in summary form in pp. 18-21 below

In its opinion the court below gave no adequate reason for its failure to give the answer to which petitioner is entitled. Its only explanation is that, inasmuch as "the order is not authorized by the Act", the court "cannot within established principles of review, undertake to decide whether Section 207(b) is authorized by the Constitution." But it gives no definition of these "established principles of review", and a diligent search through the law reports has failed to disclose them. It is true, of course, that if an administrative order is struck down for failure to conform to the statute, it is not necessary for the court to kill what has already been killed by reciting constitutional objections.

But in the instant case the court below was confronted, not with a single simple question, but with two distinct, even though related, issues. The first question concerned the validity of the allotments under the order; the second, the authority to issue any allocation order. The parties bringing the suit sought a double relief, first a larger share of the 126,033 tons which the Secretary was allocating; second, a freedom from the restriction of the accused section, so that they could refine as much of the quota of 910,000 tons, which Puerto Rico was permitted to market on the mainland, as they could secure in competition with other insular and all continental refiners. The court, in deciding the statutory question insisted that Central Roig and Western should have had more, and Puerto Rican American less of the limited number of tons to be allocated. In refusing to decide the second question, the court failed to state whether Puerto Rican American, as well as Central Roig and Western were free, exercising their constitutional rights, to seek to expand in disregard of the straight-jacket which the Congress had sought to impose upon their operations. By the court's action, a narrow and temporary re-

lief was granted; by its refusal to act a broader and more enduring relief was denied. And the interests of the Government of Puerto Rico and its people were overlooked. If two distinct questions are raised, they remain distinct questions; they do not become a single question because in distinct ways they are concerned with the same administrative order. It is submitted that as an interested party with a substantial interest in a proceeding in which the question has been properly raised, the Government and the people of Puerto Rico are entitled to a definition of their rights.

2. WHETHER OR NOT SUGAR ORDER NO. 18 IS IN CONFORMITY WITH THE STANDARDS LAID DOWN BY THE CONGRESS IN SECTION 205(a) OF THE ACT.

The issue here, involving a clash of claims between private parties, is of no legal concern to the Government of Puerto Rico. It has no desire to play favorites among the persons who claimed allocations, all of whom are its citizens. It sought no intervention in respect to the fairness and justice of the division of a restricted—as it believes an invalidly restricted—market which in Sugar Order 18 the Secretary sought to allocate. Accordingly, it is in no position either to support or to oppose the petition of the Secretary of Agriculture for a writ of certiorari in respect to the statutory question.

It must, however, point out that the enduring question of the shackles imposed upon off-shore sugar refining cannot be answered upon the administrative level. At the time the decision of the court below was made, November 24, 1948, all sugar subject to the order under attack had already been marketed. It was too late to change the allocations for 1948, and there was no practical reason for the Secretary to revise his order. Nor was there anything upon which the order after revision could take effect. The court's judgment is wholly moral; it is an admonition to the Secretary in shaping the orders for 1949 and subsequent years to be more careful to insure that the allotments

meet the standards in the Act. But each year demands its own order; and there is no compulsion upon the Secretary in the decision rendered to avoid the infirmities of an outlawed order in writing one to meet the different circumstances of a subsequent year. Moreover the sequence of administrative hearing, order, petition to the United States Court of Appeals for review, hearing and decision, and a possible appeal to this Court are likely to consume the greater part or even the whole of the year. Meanwhile all the sugar is marketed under an order which is presumed to be valid. And, when validity or invalidity is finally determined, it is too late for a revised order to correct error and to give real relief.

The dominant issue is the constitutional question; the dominant complaint, alike by private parties and by the Government of Puerto Rico, is against the wall to block expansion which the Congress has erected about the refining business. If the ruling of the court below is sustained, then all parties in interest must wait until the Secretary issues an order free from statutory attack before the United States Court of Appeals for the District of Columbia which has exclusive jurisdiction to review sugar orders will under "established principles of review" consider the constitutional question. It is a disservice to all parties who have a stake in the industry to wage a petty and protracted legal campaign along the administrative front. The validity of Section 207(b) is the heart of the controversy and we submit that Judge Edgerton was right in insisting that the court below should have passed upon it.

3. WHETHER OR NOT SECTION 207(b) OF THE ACT IS AUTHORIZED BY THE CONSTITUTION.

The issue, as presented to the court below, is one of first impression. Its exact parallel was pointed out, neither in briefs now in oral argument, by any part to the case. An authoritative answer to the question raised can be given only by this Court.

In a position for a writ of certiorari the demand is to point out the importance of the question, not to expound arguments and cite authorities which must be considered in its decision. This petition as a whole is intended to show the legal significance of the constitutional question and its vital importance to the Government and people of Puerto Rico. As for the legal issue of the validity of the accused section, it is enough to say that in the court below both the appellants and the petitioner found it necessary to consider many clauses in the Constitution, and to review a host of decisions of this Court, as well as to make excursions into Spanish and British constitutional law. And, while petitioner is firmly persuaded that the Constitution, the authorities, and the cases sustain its position that the accused section is invalid, it has great respect for the able arguments to the contrary advanced by the Secretary and by the American Sugar Refining Company, et al.

A brief summary of the argument presented by the Government of Puerto Rico will indicate alike the importance of the question and the range of legal issues which it touches off.

A. The citizens of Puerto Rico are citizens of the United States and as such possess all the rights and liberties guaranteed to persons and to citizens by the Constitution, including the ancient and established right of a trade.

a. The people of Puerto Rico were while under Spanish rule established in the basic rights and liberties which are the heritage of all free peoples.

b. The United States, in occupying the territory of Puerto Rico, was quick to recognize the established rights and liberties of its people.

c. To the citizens of Puerto Rico have been extended all the rights and liberties which attach to citizensihp in the United States.

d. The liberty of a man to, and within, his trade is among the oldest and best established of our liberties; its protection is grounded alike in the common law, in the anti-trust acts and in the due process clauses of the Constitution.

B. The accused section, in violation of the due process clause of the Fifth Amendment, abridges the liberty of the trade of citizens of the United States who live and work in Puerto Rico for the benefit of citizens of the United States who live and work on the mainland.

a. The liberty of the person to and within his trade can be denied or abridged only by due process of law, that is by the exercise of the police, or regulatory, power to serve a public purpose.

b. Raw sugar, under the operation of the free and open market, proved to be an industry in distress and the Congress was within its powers in using legislation with fairness to all interests to abate the disorder attending its production.

c. The accused section is not an integral part of the Sugar Act, draws no support from the rationale which sustains that Act, and lacks justification as an exception to the general rule of a person's liberty to and within his trade.

d. The real purpose of the accused section, which denies liberty and property to citizens of Puerto Rico without due process of law is to confer a privilege upon the continental refiners at the expense of the refiners in Puerto Rico.

e. The accused section of the Act abridges the liberties of citizens of the United States solely because they reside or transact business in Puerto Rico.

C. The accused section of the Act derives no sanction, justification or excuse from the power conferred upon the Congress to regulate the territories.

a. The accused section is not sanctioned, justified or excused by the power over the territories delegated by the Constitution to the Congress.

b. The ordinance of 1787 for the good government of the Northwest Territory, which has served as the model in formulating a political order for a territory of the United States, gives no support to the contention that the power of the Congress over the territories is absolute plenary or irresponsible.

c. The courts, in their construction and application, have refused to hold that the power of the Congress over a territory is absolute, plenary or irresponsible.

d. The power of the Congress to enact the accused section can draw no validity from the still incomplete incorporation of Puerto Rico in the body politic known as the United States of America.

D. Section 207(b) of the Act runs directly contrary to the very intent and spirit of the Constitution.

a. The accused section of the Act encounters perils from many specific clauses in the Constitution.

b. No power to strip one group of United States citizens of the right to compete and to vest the business in another group of citizens in the same industry has been delegated to the Congress by the Constitution.

E. The Congress is endowed with no power to impose upon the people of Puerto Rico, in whole or in part, a colonial system, or to reduce that territory to the status of a colony.

a. The attempt of the thirteen colonies to escape the restrictions of the old colonial system created the climate of opinion within which the Constitution was framed.

b. The Constitutional Convention, after adequate deliberation, rejected a colonial status for the people of any territory belonging to the United States.

c. It is settled law that no power has been conferred upon the Congress to impose a colonial status upon any group of citizens of the United States.

It is submitted that the instant case, affecting the status of Puerto Rico and of its citizens, is the most important case affecting our off-shore territories which has come before this court since the decision of *Downes* v. *Bidwell*, 182 U. S. 244.

VII. Reasons For Granting the Writ.

The compelling reasons for granting the writ have been recited in the paragraph above. Under this caption it remains only to add a point or two not yet covered and con-

cretely to recite the interest of the Government of Puerto Rico in the case.

1. THE FAILURE OF THE COURT BELOW TO DECIDE THE CONSTITUTIONAL QUESTION IMPOSES NO BAR TO, AND IN NO WISE MAKES MORE DIFFICULT, ITS CONSIDERATION BY THIS COURT.

It is understandable that, in the performance of its appellate office, this tribunal as a usual rule demands that the matter in issue be first processed by a lower court. The rule is salutory, and in most instances contributes to wider knowledge, sharper analysis, and more informed judgment. The instant case presents the clear exception to the rule. Here the facts are fully presented and none of them are in dispute. Here the parties are all in agreement as to the statutory and the constitutional questions which are involved; the questions are stated by the adverse parties in almost the same words. The constitutional question presents a series of issues at law which must be resolved by oral argument and the presentation of briefs; and ultimately it must be resolved by this Court. As the opinion below states, the issue of the validity of the accused section has already been "fully argued". In any event, as this court meets the constitutional issue—whenever and in whatever form the challenge reaches it—these arguments, perhaps with revisions, will have to be repeated before it. Since the case already presents a clear-cut constitutional issue, entirely uncomplicated by other considerations, this court is as well prepared to entertain the issue as if the court below had expressed an opinion upon it.

2. THE ESTABLISHED PRINCIPLES OF SOUND JUDICIAL ADMINISTRATION DEMAND THE TIMELY DISPOSITION OF THE CONSTITUTIONAL ISSUE.

It has been impossible, in drafting this petition, to follow the conventional form. The conflicting opinions of two circuits cannot be cited, when no circuit court has passed upon the validity of the accused section. The court below cannot

be accused of deciding in the face of the authorities when it has made no decision at all. And, if no case exactly in point* can be cited for asking this tribunal to resolve the issue when the lower court has refused to do so, no case to the contrary can be cited. Nor can it truthfully be said that the Government of Puerto Rico has no recourse left save an appeal to this court.

But it can be truthfully said that the question is of the utmost importance; that the public interest, as well as that of private parties, demands an early judgment; and that ultimately that judgment must be made by this Court. It is possible, of course, to raise the question in an appeal from the Sugar Order for 1949; but that appeal has to go to the court below and that court has expressed its unwillingness to touch the constitutional issue if the order being reviewed is challenged on statutory grounds. A corporation belonging to the Government of Puerto Rico might attempt to ship refined sugar in excess of the limitation, be denied the privilege by the customs officials, and seek an injunction based upon the invalidity of the accused section. But such a shipment would have to be made late in the year; and even then, for one reason or another, less than 126,033 tons might have been marketed, and as a result the cargo would go through without challenge. Or the Land Company, a wholly-owned corporation of the Government of Puerto Rico, which owns a number of centrals, might decide to refine the sugar which it produces, seek a loan from the Government's bank, and in court, in advance of investment, ask for a declaratory judgment of its rights. There are, apart from intervention in a private suit, a number of other ways in which the petitioner might raise anew the question which it is now presenting to this Court.

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* A close parallel is *Federal Trade Commission* v. *Goodyear Tire and Rubber Co.*, 304 U. S. 252, involving Section 2, the "quantity discount provision in the Clayton Act." The Sixth Circuit had refused to decide the question before it, and the Supreme Court in a memorandum opinion remanded the case with a directive "for a determination of the merits."

But recourse to any such procedure would be time-consuming; and in the end could do no more than confront this Court with the exact issue which is now being presented to it. In the instant case that issue has been properly raised; delay can accomplish nothing more than bring bother, inconvenience, uncertainty and loss to all parties in interest. It is submitted that sound judicial administration demands that the issue be now met and properly decided.

3. ABOVE ALL THE INTERESTS OF THE GOVERNMENT AND THE PEOPLE OF PUERTO RICO WILL BE PUT IN JEOPARDY BY A DELAY IN REACHING A FINAL JUDGMENT UPON THE VALIDITY OF THE ACCUSED SECTION.

The Government of Puerto Rico has an interest in this case far greater than that of any of the private parties. It sought to intervene because it is under obligation to develop its agriculture, industry and commerce; to link the insular with the continental economy; to raise the standard of life of its citizens to a minimum of decency; and to rescue its people from a plight which would bring disaster to a less resolute and resourceful population. It has formulated and is putting into effect a public policy, embracing a number of measures, through which it hopes to realize these objectives. But its whole program is put in jeopardy, if this Court holds that the Congress has power to pass the kind of Act represented by the accused section.

Puerto Rico is a territory of the United States. It is eight flying hours from New York City. It is only 100 miles long and 35 miles at the widest. Not more than one-third of its territory is arable land, and of this a large part is marginal. In this confined area a population of 2,200,000 is crowded. The population density is 600 per square mile, fifteen times as great as that of the United States. Agriculture cannot be made intensive enough to support so many people. It must, if it is to survive, export the labor of its people in the form of "value added by manufacture;" and the higher the skill which go into the goods it sends to the mainland, the greater the volume and value of the products

it receives in return. In a word, there is no salvation for Puerto Rico but in industrialization and commerce with the continent.

The island was ceded by Spain to the United States in 1898. Its dominant language is still Spanish, although almost all in the higher income groups also speak English. Its Spanish tradition is slowly yielding to American ways; and its economy, closely linked with that of Spain at the turn of the century, is now oriented to the United States. Although the government spends one-half of its income on education—a higher percentage than any state in the Union—facilities for learning are still inadequate and the illiteracy rate is still high. The people are highly endowed with potential skills, and training in the industrial arts is bringing out latent talents. The people of Puerto Rico, under the Organic Act as amended are citizens of the United States, endowed with all the rights and privileges of United States citizenship.

The island's economy—the ways and means of life for its people—has by tradition been agricultural. The dominant crop and the first source of income is raw sugar. Next comes the distilling and sale of rum. Then comes tobacco, pineapples and coffee, now a declining industry. But even the new agriculture, resting upon fruits, vegetables and cut flowers of high quality and value, cannot support a population of such density. Although to some extent the pressure of the people upon the land is being relieved by migration to the continent, there must be a shift—a rapid and extensive shift—to a refining, processing, manufacturing base, if the island is to support its population.

In view of this situation, the Government of Puerto Rico has recently embarked upon a comprehensive program for promoting new crops, bringing factories to the island, stimulating trade, and forming "a more perfect union" with the continental United States. To that end it has made a survey of its economic potential, revised its pattern of taxation, set up agencies of government to execute its program, and invested large sums of money in its industrial future.

In the policy of the government expanding opportunity for employment has come to be a first necessity. Section 207(b) of the Act—and the reputed power of the Congress on which it rests—put in serious jeopardy the whole of the Government's program.

The Government of Puerto Rico has an interest in resisting—and a duty to resist—every attempt to arrest its industrial development, to drive it back upon agriculture, to fasten upon it a colonial status. Its citizens are citizens of the United States and it is under obligation to see to it that equality is preserved, that discrimination is avoided, that the rights and privileges of its citizens—including the ancient liberty of a trade—are not denied or abridged to the benefit of other citizens of the United States who happen to live and do business on the mainland. The distance of the island from the continent—ranging from 1200 to 1800 miles—and the inheritance of a Spanish culture—impose serious obstacles to the full incorporation of Puerto Rico into the federal union known as the United States of America. The Government of Puerto Rico is under a duty to support every measure which makes for, and opposing every measure which works against, such a development of the island, its culture and its people as will enable it as early as possible to take its rightful place in our political system. Above all, it is under a duty to see to it that in a modern return to the old colonial system, the Congress does not appoint Puerto Rico to the office of producing raw materials for mainland manufacture.

In a word, the future of Puerto Rico and its people rests on the judgment passed upon Section 207(b). For if the Congress can limit the amount of sugar which in refined form the people of the island are permitted to market on the mainland, it can decree—as it has already done for the Virgin Islands—that Puerto Rico can market on the continent no sugar ready for direct consumption. And, if in respect to sugar, the Congress can limit the mainland market to the raw product, it can do the same thing in other industries, and impose a direct prohibition against the processing, refining and manufacture of any finished commod-

ity on the island—save for local consumption. The fate, therefore, of insular industries devoted to such products as cement, plyboard, furniture, textiles, distilled spirits, and glass containers, is tied up in the present case.

4. THE CITIZENS OF PUERTO RICO, WITHOUT ACCESS TO THE FEDERAL POLITICAL PROCESS, HAVE NO RECOURSE SAVE TO THE COURTS FOR THE PROTECTION OF THEIR RIGHTS.

In respect to all such matters Puerto Rico has no access to the political process. Its two and a quarter million people possess no Senators or Representatives. In the Congress the territory has only a Resident Commissioner, who by the courtesy of that body—there is no law on the subject—is indulged a seat in the House of Representatives but has no vote. As "a discreet and insular minority,"[9] without recourse to the Congress, the people of Puerto Rico must depend upon the courts to vindicate their rights as American citizens.

CONCLUSION.

It is submitted that in the instant case a writ of certiorari should be issued addressed to the United States Court of Appeals for the District of Columbia Circuit; and that this Court should, after due and proper procedure, pass upon the validity of Section 207(b) of the Sugar Act of 1948, or in the alternative remand the instant case to the above-mentioned court with a directive to decide whether or not the accused section is authorized by the Constitution.

Respectfully submitted,

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[9] See the classic "Footnote 4" in the opinion of Mr. Justice Stone, in *U. S. v. Carolene Products Co.*, 304 U. S. 144.